



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL

December 7, 1976

The Honorable Roy W. Mouer
Commissioner
State Securities Board
P. O. Box 13167, Capitol Station
Austin, Texas 78711

Letter Advisory No. 118

Re: Whether the step-
father of a member of the
Legislature may serve on
the State Securities Board.

Dear Commissioner Mouer:

You have requested our opinion regarding whether the stepfather of a member of the Legislature may serve on the Securities Board. You state that an individual was appointed by the Governor to the Securities Board on June 9, 1975, but that, since the Legislature has not convened since that date, his appointment has not yet been confirmed by the Senate as required by article 581-2, V.T.C.S. Subsequently, at the general election held on November 2, 1976, the appointee's stepson was elected to serve in the 65th Legislature as a member of the House of Representatives. You ask whether article 5996a, V.T.C.S., the nepotism statute, will prohibit the Senate from confirming the appointment.

Article 5996a provides:

No officer of this State nor any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, nor any officer or member of any State district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any General or Special Law of this State, nor any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of

any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever; provided, that nothing herein contained, nor in any other nepotism law contained in any charter or ordinance of any municipal corporation of this State, shall prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty for a period of two (2) years prior to the election or appointment of the officer or member appointing, voting for, or confirming the appointment, or to the election or appointment of the officer or member related to such employee in the prohibited degree. (Emphasis added).

The appointee's stepson was elected to the Legislature less than two years after the appointment. Furthermore, it is clear that a member of the Securities Board occupies an "office" or "position" within the terms of article 5996a. The answer to your question depends, therefore, upon whether an individual is related to his stepson within the second degree by affinity and whether a member of the Securities Board receives compensation from public funds.

"Affinity" has been defined as

the relationship which arises by reason of marriage between one of the married pair and the blood relatives of the other. . . .
Harwell v. Morris, 143 S.W.2d 809, 811
(Tex. Civ. App. -- Amarillo 1940, no writ).

The relationship must rest, however, upon a subsisting marriage, and it ceases with the dissolution of the marriage which produced it, whether by death or divorce, unless the marriage resulted in issue who are still living. Lewis v. O'Hair, 130 S.W.2d 379, 381 (Tex. Civ. App. -- Austin 1939, no writ); Attorney General Opinion O-2648 (1940). In our opinion, the appointee to the Securities Board is related to his wife's son within the first degree by affinity. Compare Letter Advisory No. 66 (1973). So long as the appointee's wife remains alive and their marriage continues, the appointee is related to her son within the prohibition of article 5996a. After her death or their divorce, the relationship continues only if and so long as there are living descendants of the marriage.

Article 5996a is applicable "when the salary, fees, or compensation" of the appointee is "paid for, directly or indirectly, out of or from public funds or fees of office." Members of the Securities Board receive

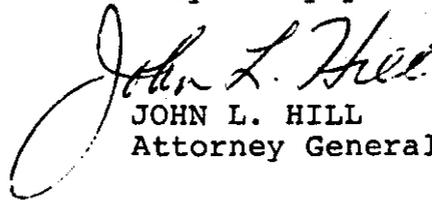
actual expenses while engaged in the performance of their duties and a per diem of Ten Dollars (\$10.00) per day for not exceeding sixty (60) days for any one year.
V.T.C.S. art. 581-2(A).

In Letter Advisory No. 56 (1973), we held that per diem compensation of members of the Board of Mental Health & Mental Retardation was included within the definition of "compensation" as used in subsection 11.22(b) of the Texas Education Code. Likewise, it is our view that the per diem allowance authorized for members of the Securities Board is embraced within the meaning of "compensation" in article 5996a. We do not believe the fact that the board member has declined to file a claim for the compensation due him is relevant in determining whether the nepotism statute is applicable. We conclude that members of the 65th Legislature will be prohibited by article 5996a from confirming the appointment of the individual you have described to membership on the Securities Board.

S U M M A R Y

Members of the Legislature may not vote to confirm the appointment to the Securities Board of a person whose stepson is a member of the Legislature.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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